

1 The State of Ohio,
2 County of Cuyahoga.

3 IN THE COURT OF COMMON PLEAS

4
5 JOANNE M. CROW, ET AL.

6 Plaintiffs,

7 -v-

8 DEBORAH L. DOTSON, Executrix)
9 etc., et al.,

10 Defendants.

) Case Number 345899

) Judge Russo

11
12 DEPOSITION OF ROBERT C. CORN, M.D.
13 Thursday, September 24, 1998

14
15 Videotape deposition of ROBERT C. CORN, M.D., called by the
16 Defendants for examination under the Ohio Rules of Civil
17 Procedure, taken before me, the undersigned, Aimee N.
18 Szinte, a Notary Public in and for the State of Ohio, at
19 the offices of Gallagher, Sharp, Fulton & Norman, 7th
20 Floor, Bulkley Building, Cleveland, Ohio 44115, commencing
21 at 5:10 p.m. the day and date above set forth.

22
23 CORSILLO & GRANDILLO
24 COURT REPORTERS
25 950 Citizens Building
Cleveland, Ohio 44114
216-523-1700

COPY

1 **APPEARANCES:**

2 On Behalf of the Plaintiffs:

3 Jospeh L. Coticchia, Esquire
4 1640 Standard Building
 Cleveland, Ohio 44114

5 On Behalf of the Defendants:

6 Mark A. Greer, Esquire
7 Gallagher, Sharp, Fulton & Norman
8 7th Floor, Bulkley Building
 Cleveland, Ohio 44115

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(Defendant's Exhibit A and B were marked

for identification.)

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ROBERT C. CORN, M.D.

called by the Defendant for examination under the Ohio

Rules of Civil Procedure, after having been first duly

sworn, as hereinafter certified, was examined and testified

as follows:

— — — — —

EXAMINATION

— — — — —

BY MR. GREER:

Q Doctor, would you please introduce yourself to the

jury?

A My name is Robert Curtis Corn, C-o-r-n.

Q Where are we today, Doctor?

A We're at my main office at 850 Brainard Road in

Highland Heights, Ohio.

Q Doctor, before we get into the issues surrounding the

plaintiff, I would like to discuss your education, training

and experience with the jury.

Where did you go to college, Doctor?

A I received my Bachelor of Science in biology from the

Albright College in Reading, Pennsylvania. I graduated in

1 1971.

2 Q Where did you attend medical school?

3 A I then returned to my home town, Philadelphia,
4 Pennsylvania, where I attended the Hahnemann University
5 School of Medicine from 1971 until my graduation in 1975.
6 I graduated in June of 1975 with my M.D. degree.

7 Q What did you do at that point?

8 A I moved out here to Cleveland in late June of 1975
9 and I started my orthopedic residency training, that is my
10 training in my medical specialty, at The Cleveland Clinic.
11 I was at The Clinic from June of 1975 until June of 1979
12 when I graduated from the program.

13 Q Then what did you do at that point?

14 A I took a couple months off and then I entered the
15 private practice of orthopedic surgery on August 1st, or
16 certainly early August of 1979. And for over 19 years I
17 have been a private practice orthopedic surgeon primarily
18 on the east and southeast side of the city.

19 Q Are you licensed, Doctor?

20 A I am licensed.

21 Q In which state?

22 A Just in Ohio.

23 Q When were you licensed, Doctor?

24 A In 1976.

25 Q What is your area of practice, Doctor?

1 A My specialty is known as orthopedic surgery.

2 Q And what exactly does that entail, Doctor?

3 A Well, this is the branch of medicine which involves
4 the medical and surgical treatment of diseases, disorders,
5 injuries and some tumors involving the musculoskeletal
6 system. That includes problems with the bones, muscles,
7 tendons, joints and ligaments. And we also deal with a
8 variety of other types of injuries and traumas. We cover
9 to emergency rooms, so we get a fair amount of vehicular
10 trauma as well as slip and fall type traumas. We also deal
11 with arthritis and joint replacement surgery, sports
12 medicine and arthroscopic surgery, as well as surgery and
13 problems of the hand.

14 Q Doctor, you are Board certified?

15 A I am Board certified.

16 Q What exactly does that mean?

17 A Well, the Board certification is a process. When you
18 are in medical school and you decide what you want to do
19 when you grow up, you contact the Boards, which every
20 medical and surgical subspecialty has a committee which
21 sets up the educational requirements.

22 So I wanted to go into orthopedic surgery. I had to
23 have completed a residency program in orthopedics. Now,
24 that is a apprenticeship type of program where the more you
25 learn and the longer you're in it, the more responsibility

1 you get. You learn how to start doing simple surgeries in
2 your first year and as your expertise improves, you do the
3 more complex types of surgery. So you have to complete a
4 residency program.

5 Part of that program is passing an in-training
6 examination, which is an extraordinarily difficult exam,
7 much more difficult than the final Board certification
8 exams. And it's good to weed out the programs, the
9 residencies that may not be as good as others to help
10 doctors and these programs develop better training so you
11 have a standard throughout the nation.

12 After graduation I had to be in the clinical practice
13 of orthopedic surgery for one calendar year in one
14 geographical location. During that time a peer review
15 takes place. Doctors come and they watch you do surgery,
16 they go through an interview process, they come in while
17 you're making rounds on patients. So **it's** a highly visible
18 type of scrutiny.

19 And then the final step is a series of written and
20 oral examinations, and at that time they were given once a
21 year, and after passing the exam and completing the other
22 requirements, the Board would certify you.

23 Q Are you Board certified in any other areas other than
24 orthopedics, Doctor?

25 A Yes, I am.

1 **a** What other areas are you Board certified in?

2 A In 1996 I was certified by the American College of
3 Forensic Medicine and by the American College of Forensic
4 Medical Examiners.

5 Q And forensic medicine, what does that generally
6 entail, Doctor?

7 A Well, forensic medicine is the part of medicine that
8 deals with law and legal issues or forums. They can be
9 ranging everything from what is disability, what is
10 impairment, to the forensics of evidence. You know, what
11 evidence is admissible, what is not. What is appropriate
12 lab testing. It's really a whole field. Just everywhere
13 that law and medicine touch in all different areas, that's
14 what forensic medicine essentially is.

15 Q Does that also include such areas as blood testing
16 and alcohol levels in a person?

17 A Yes.

18 Q Doctor, what hospitals are you affiliated with?

19 A I'm a staff orthopedic surgeon at the Meridia
20 Hillcrest Hospital, the Meridia Euclid Hospital, Meridia
21 Huron Hospital, University Hospitals Bedford Medical
22 Center, the PHS Mt. Sinai Hospital System, the eastern
23 campus, the Lake County hospital, system if I didn't say
24 that. And these privileges are essentially emergency room,
25 hospital admission privileges and surgical privileges.

1 Q Doctor, do you teach?

2 A I do.

3 Q Where at?

4 A At this point in time I basically teach doctors, but
5 I do have faculty appointments at two undergraduate, or I
6 should say post-graduate programs; Case Western Reserve
7 University School of Medicine and the Ohio College of
8 Podiatric Medicine. I'm also an instructor in laser
9 surgery.

10 Q Doctor, are you published?

11 A I have published, yes.

12 Q Doctor, I would like to hand you what's been marked
13 as Defendant's Exhibit A and ask you if you recognize that
14 document?

15 A Yes. This is a updated copy of my curriculum vitae.

16 Q Does that set forth your education, your training,
17 your experience, the various boards, organizations that
18 you're a member of as well as the publications that you've
19 made?

20 A Yes.

21 Q Thank you. Now, Doctor, were you asked to review the
22 medical records pertaining to the plaintiff, Joanne Crow,
23 to then examine her and then to issue a medical report?

24 A I was asked to do that, yes.

25 Q Is that what we generally call an independent medical

1 examination?

2 A Well, the examination may or may not include the
3 report, but it certainly in this case did include a medical
4 report.

5 Q Doctor, could you show the jury the records that you
6 were asked to review before your examination of the
7 plaintiff?

8 A Well, actually these were reviewed after the exam,
9 but this was part of the evaluation, these medical records.

10 Q Okay. Did it take a fair amount of time for you to
11 review the extensive records?

12 A Yes.

13 Q Did you also examine the plaintiff?

14 A I did.

15 Q After examining the plaintiff and reviewing the
16 records did you write a report?

17 A I did, yes.

18 Q How long is your report, Doctor?

19 A I believe it's five pages.

20 Q Did you charge for your time in reviewing the
21 extensive records, meeting with the plaintiff, examining
22 the plaintiff and then writing your five page report?

23 A I did, yes.

24 Q Are you charging for your time today?

25 A I am.

1 Q Is that basically because you've blocked off a
2 certain amount of time today no matter how long we take?

3 A That's correct.

4 Q Doctor, have you performed independent medical
5 examinations in the past for me?

6 A Yes, I have.

7 Q Have you performed independent medical examinations
8 for my office in the past?

9 A Yes.

10 Q Could you give the jury a general idea as to the
11 number of independent medical examinations you perform on
12 average per week?

13 A Per week, the average would be two exams per week,
14 and that's been an average over the past ten years.

15 Q During the course of an average week how many
16 patients do you generally see?

17 A Depending if we're on call at a hospital, anywhere
18 from 50 to 80 patients a week.

19 Q Do you also see patients and perform surgery, both
20 scheduled and emergency, during the course of a given week?

21 A Yes.

22 Q So is it fair to state then that the -- that seeing
23 on average two patients for an IME per week constitutes a
24 small fraction of the total number of people you see per
25 week?

1 A Yes. That's true,

2 Q Did you have a chance to review the records
3 pertaining to the plaintiff?

4 A I did.

5 Q Doctor, I want to ask you some questions, and in your
6 testimony I want you to base any opinions upon a reasonable
7 degree of medical certainty, okay?

8 A Sure.

9 Q From your review of the medical records were you able
10 to determine what injuries the plaintiff sustained in the
11 accident, the motor vehicle accident?

12 A Yes.

13 Q What injuries did you determine that she sustained?

14 A Joanne Crow sustained a open fracture of the right
15 radius in what we call the distal third, that is the third
16 of the bone closest to the elbow, rather closest to the
17 wrist. We typically divide the bones by thirds, the upper,
18 middle and lower third, and this was in the lower half of
19 the right radius.

20 Q Were you able to determine what treatment she
21 received?

22 A Yes.

23 Q What treatment did she receive?

24 A She received appropriate care and treatment on the
25 scene by the EMS squad. She had appropriate care and

1 treatment in the emergency room at the MetroHealth Medical
2 Center. She had the necessary operation and she recovered
3 beautifully from that injury and surgery.

4 Q Were you able to determine from the records whether
5 the fractures healed properly?

6 A Yes. It is entirely healed and healed in the
7 position that it was set in.

8 Q And how, again, would you describe the result that
9 was received or obtained?

10 A I think it's an excellent objective result.

11 Q Doctor, from your review of the records pertaining to
12 the plaintiff following her surgery did you see any
13 treatment or doctors' visits from MetroHealth after October
14 1 of 1996 with regards to her right arm or hand?

15 A No.

16 Q So is it fair to state then that approximately three
17 and a half months after the accident it appears as though
18 the plaintiff had no further treatment with regards to her
19 right arm or hand?

20 A That is a true statement, yes.

21 Q Now, you're aware from the records that the plaintiff
22 had a fall approximately one year after the motor vehicle
23 accident?

24 A Yes.

25 a During your review of those records of the

1 plaintiff's treatment in May, June, July and August of 1997
2 did you find any record of the plaintiff ever complaining
3 about any problems with her right arm or hand?

4 A No. The records were solely for her severe left
5 wrist fracture and no complaints in reference to her right
6 upper extremity.

7 Q During that time frame was the plaintiff seeing
8 orthopedic specialists such as yourself?

9 A She was, yes.

10 Q As a physician if a patient were to complain of a
11 problem, would that physician make a note of that in the
12 record?

13 A The standards of care for charting in any medical
14 community involves placing all the patient's complaints,
15 not just the ones that you're most concerned with, any
16 complaints that the patient voices should be placed with an
17 appropriate documentation of an examination.

18 Q And if the plaintiff had complained of problems with
19 her right arm, would you have expected the physicians to
20 have examined her and documented their findings?

21 A That would be what would be typically seen, certainly
22 at Metro, that they provide excellent medical care there.

23 Q And again I want to make sure the jury understands.
24 There is no record of any problems with her right arm or
25 hand during May, June, July and August of '97 when she was

1 seen at MetroHealth Hospital?

2 A I don't believe there is even one reference to her
3 right side.

4 Q Now, Doctor, during your review of the records
5 pertaining to the plaintiff did you have a chance to
6 observe the toxicology report?

7 A Yes. She had fairly routine laboratory studies in
8 the emergency room and one of them was a toxicology screen
9 for blood alcohol.

10 MR. COTICCHIA: Objection. The Court
11 has ruled that the alcohol will be excluded
12 from testimony. The Court has given counsel
13 for the defendant permission to file a
14 motion to reconsider.

15 Number two, the alcohol is not related
16 to the cause of the injury, nor is it
17 related to any knowledge that the plaintiff
18 may have regarding the driver who was, in
19 fact, intoxicated.

20 Q Doctor, did you have a chance to review the
21 toxicology report?

22 A I did.

23 Q Was a blood alcohol test performed?

24 A Yea.

25 Q From your review of the records do you know what time

1 the blood alcohol test was taken?

2 A Approximately 12:20 a.m., about an hour after the car
3 accident.

4 Q From your review of the records what did the test
5 results demonstrate?

6 A It demonstrated a blood alcohol level of .18, which
7 is legally intoxicated in the State of Ohio.

8 MR. COTICCHIA: Objection. Move to
9 strike. .1 relates to Chapter 45, the
10 operation of motor vehicles. I would like
11 to know what the doctor's referring to
12 that's not legally permitted or legal level
13 when, in fact, this lady wasn't driving a
14 motor vehicle.

15 MR. GREER: You've made your objection
16 for the record.

17 MR. COTICCHIA: What's he referring to
18 that's illegal limit? She's not driving the
19 car.

20 MR. GREER: I'm going to object to the
21 form of your objection. You've made an
22 objection for the record. You can inquire
23 of the doctor on cross-examination.

24 Q Doctor, to a reasonable degree of medical certainty
25 would a blood alcohol level of .18 have an impact upon a

1 person's perception?

2 MR. COTICCHIA: Objection. Move to
3 strike. Contrary to the Court's ruling in
4 limine?

5 A Yes.

6 Q Doctor, would a blood alcohol level of .18 have an
7 impact upon a person's reactions?

8 MR. COTICCHIA: Objection. Move to
9 strike. Contrary to the Court's order in
10 limine.

11 A Yes, it would.

12 Q Doctor, would a blood alcohol level of .18 have an
13 impact upon a person's judgment?

14 MR. COTICCHIA: Objection. Move to
15 strike. Contrary to the Court's order in
16 limine.

17 A Yes, it would.

18 Q Doctor, would a blood alcohol level of .18 have an
19 impact upon a person's memory?

20 MR. COTICCHIA: Objection. Move to
21 strike, Contrary to the Court's order in
22 limine.

23 A Yes, it would.

24 Q Doctor, would a blood alcohol level of .18 have an
25 impact upon a person's ability to think clearly?

1 MR. COTICCHIA: Objection. Move to
2 strike, Contrary to the Court's order in
3 limine.

4 A Yes, it would.

5 Q Doctor, you did have a chance to examine the
6 plaintiff, correct?

7 A Yes, I did.

8 Q When did you examine the plaintiff?

9 A The examination took place here in my office on
10 August 5 of 1998.

11 Q Could you describe for the jury what you did during
12 the course of your examination?

13 A My examination was a typical orthopedic examination
14 for an initial evaluation. It involved taking a medical
15 history, observing the patient, doing a detailed physical
16 examination and a detailed neurological examination. It
17 was basically a comprehensive orthopedic exam.

18 Q During the course of your examination, Doctor, was
19 plaintiff's counsel present?

20 A Yes.

21 Q And did plaintiff's counsel have a video taken of
22 your examination?

23 A A videographer was there the entire time.

24 Q Doctor, I would like to hand to you what's been
25 marked as Defendant's Exhibit B. Is that a copy of the

1 video of your examination of the plaintiff?

2 A That's what the label states, yes.

3 Q Now, Doctor, could you describe for the jury the
4 findings during your examination?

5 A I would be glad to.

6 The physical findings, again, the examination was
7 confined to the upper extremities, that is both of the
8 arms. In order to fully evaluate the right upper extremity
9 I evaluated the left upper extremity. **And** the left upper
10 extremity was actually more abnormal than the right upper
11 extremity. This was the wrist fracture area that she
12 sustained about a year after this right wrist fracture in
13 the car accident.

14 Examination of the right upper extremity showed that
15 she had better mobility at the wrist and elbow and, in
16 fact, full mobility at the wrist and the elbow, whereas
17 there was approximately 15 percent restriction of movement
18 in her left upper extremity at the elbow and at the wrist
19 joint.

20 There was approximately a 5 centimeter laceration,
21 which is about, I don't know, maybe 2 inches -- well, maybe
22 less than 2 inches long, with about a 15 centimeter
23 incision about 5 or so inches long that was on the right
24 radial, that **is** the thumb side of the forearm, that was due
25 to this accident. The laceration was where the bone had

1 A I do have an opinion, yes.

2 Q What is your opinion?

3 A The patient sustained a open fracture of the right
4 distal third of the radius and she also sustained a
5 fracture of the distal ulna at that same extremity.

6 Q Do you have an opinion to a reasonable degree of
7 medical certainty as to whether the fracture is healed?

8 A I do have an opinion.

9 Q What is that opinion?

10 A The fracture has completely healed radiologically and
11 clinically.

12 Q Do you have an opinion to a reasonable degree of
13 medical certainty as to whether the plaintiff obtained a
14 good orthopedic result?

15 A I do have an opinion.

16 Q What is that?

17 A To the best of my diagnostic ability and in comparing
18 this injury to many injuries I've had in my practice
19 similar, she has an excellent result.

20 Q Do you have an opinion to a reasonable degree of
21 medical certainty as to whether the plaintiff is suffering
22 from de Quervain Syndrome today?

23 A There was no evidence of de Quervain Syndrome, which
24 is a tendonitis of the thumb.

25 Q Do you have an opinion to a reasonable degree of

1 medical certainty as to whether the plaintiff will need to
2 have the plate in her arm, her right arm, removed at some
3 point?

4 A I do have an opinion.

5 Q What is that opinion?

6 A I do not believe she needs to have the plate
7 removed. It is a small, more flexible type of plate. It
8 would be totally an option up to the patient and a doctor
9 who would be willing to do it. It is not a medical
10 necessity, nor do I recommend individuals with forearm
11 fractures to have their plates removed, so I would not
12 recommend it.

13 Q From your review of the medical records have any of
14 the plaintiff's treating physicians ever advised her that
15 at some point she should have the plate removed?

16 A Not to my knowledge.

17 Q Doctor, do you have an opinion to a reasonable degree
18 of medical certainty as to whether the plaintiff has any
19 problems or residuals today?

20 A Other than the complaints that she has, that is of
21 the stiffness in the arm and the numbness around the
22 incision, there are no objective or measurable
23 abnormalities that a physician can find that would be
24 abnormal. She has the scar from her wound and scar from
25 her surgery, but that's about it. She has full functional

1 mobility. She has excellent muscular development. And by
2 all criteria doctors use, she has a wonderful result.

3 Q Doctor, with regards to the sensation around the
4 incision site do you have an opinion to a reasonable degree
5 of medical certainty as to whether that will resolve in
6 time?

7 A To answer your question specifically, typically
8 people that complain of incisional or what I call
9 peri-incisional, that is around the incision numbness, that
10 typically reduces with time. Again, this is a subjective
11 type of area and it's difficult to document straight across
12 the board because you are depending on the patient's
13 voracity in explaining where these abnormalities they claim
14 are. But typically this gets better with time.

15 Q Doctor, do you have an opinion to a reasonable degree
16 of medical certainty as to whether the plaintiff has any
17 functional problems today?

18 A Well, certainly at the time of my evaluation there
19 was no functional impairment of the right upper extremity.
20 There was a definite functional impairment in her left
21 upper extremity.

22 Q And the injury to her left upper extremity was caused
23 how?

24 A By the subsequent injury that happened about a year
25 afterwards.

1 Q When she fell down the stairs?

2 A Correct.

3 Q Doctor, do you have a reasonable -- do you have an
4 opinion to a reasonable degree of medical certainty as to
5 whether the plaintiff has obtained a highly successful
6 recovery from the injuries she sustained in the car
7 accident?

8 MR. COTICCHIA: Objection. Asked and
9 answered. Move to strike.

10 A I do believe she's had a very successful recovery,
11 yes.

12 MR. GREER: Thank you, Doctor. No
13 further questions.

14 MR. COTICCHIA: Dr. Corn, I'm Joe
15 Coticchia. I represent Joanne Crow and her
16 husband, Ken Crow.

17 - - - - -

18 EXAMINATION

19 - - - - -

20 BY MR. COTICCHIA:

21 Q I'm going to try to find out if we can agree on
22 anything today, Dr. Corn.

23 From the report that I have which you sent to the
24 defendant's lawyer, it's dated August 26, 1998, you
25 examined Joanne Crow on August 5, 1998, is that correct?

1 A Yes.

2 Q And that was more than two years from the time of the
3 injury, is that correct?

4 A Yes.

5 Q And in your report that the only aspect of Dr.
6 Fumich's report that you disagree with is his high
7 correlation of the development of carpal tunnel syndrome,
8 is that correct?

9 A I don't remember Dr. Fumich's report word for word,
10 but one of the areas I felt that were somewhat inaccurate
11 in his report was the incidence of carpal tunnel syndrome
12 after this type of fracture. It is much more common after
13 the type of fracture she had in her left arm, but not in
14 the right arm.

15 MR. COTICCHIA: Objection to the
16 answer as not responsive to the question.

17 Q Maybe you didn't understand me. Will you please turn
18 to Page 2 of your report. The last paragraph in the
19 middle, 1, 2, 3, 4, 5, 6 lines down with the first
20 sentence, isn't it true that you state in this report,
21 Doctor, do you have it in front of you?

22 A I do.

23 Q You see the part that I'm quoting?

24 A I see the exact part that you're quoting.

25 Q "The only aspect of Dr. Fumich's report that I

1 forced its way through the skin and the incision was in
2 order to get exposure in order to do the internal fixation
3 procedure.

4 Other than the scar and an area of subjective
5 numbness that she seemed to have about the incision, there
6 was no atrophy in the forearm or muscle wasting. The right
7 side was larger than the left side, which was interesting,
8 which means she's using her right side more than the left
9 side. And basically other than the incision she had a
10 normal examination.

11 Q Doctor, have you had an opportunity to review the
12 medical report of Dr. Fumich?

13 A I have.

14 Q How long is his report?

15 A Just short of two pages.

16 Q Do you know, Doctor, whether Dr. Fumich ever examined
17 the plaintiff?

18 A He never examined the patient.

19 Q As far as you know are you the last physician to have
20 examined the plaintiff with regards to her right arm and
21 hand?

22 A As far as I'm aware of, yes.

23 Q Doctor, do you have an opinion to a reasonable degree
24 of medical certainty what injuries the plaintiff sustained
25 in the motor vehicle accident?

1 disagree with is the fact that with the distal third radial
2 fractures there is a high correlation of development of
3 carpal tunnel. syndrome."

4 Is that, in fact, what you said?

5 A That is exactly what I said word for word.

6 Q And is that, in fact, the only part of Dr. Fumich's
7 report that you disagree with?

8 A I don't remember the rest of the report at this point
9 in time.

10 Q Then we can take your word for what you've put here
11 in print, can't we?

12 A We can take my word on that subject only, that that
13 is a point that I had disagreement when I wrote that
14 report, yes.

15 Q All right.

16 A I also disagree that the plate has to be removed, but
17 that never came up before.

18 Q In the report --

19 A Whose report?

20 Q -- prepared by you, you state that Dr. Fumich does
21 not mention Joanne Crow's fractured left arm, correct?

22 A I don't remember.

23 Q In fact, did you read Dr. Fumich's report?

24 A I read Dr. Fumich's report, yes,

25 Q And, in fact, he refers to that, doesn't he?

1 A He may. I don't remember.

2 Q If he refers to it in this report, would you state
3 that you made a mistake in your report?

4 MR. GREER: Objection.

S A I don't know.

6 Q Well, Doctor, you state in your report, "Dr. Fumich
7 made no reference to Joanne Crow's fractured left arm."
8 Didn't you say that?

9 A Can you tell me where it is?

10 Q I want to go off the record and let you read it
11 yourself.

12 A I know. But tell me what page it is.

13 Q No, I'm not. You told me you reviewed it and I'm
14 asking you a question. I'm not going to review it for
15 you. If you don't remember, you can state on the record
16 you don't remember.

17 A I told you I didn't remember, twice.

18 Q Doctor, I want to mark this as -- I'll just make a
19 note up here, Plaintiff's Exhibit 171, and ask you if this
20 is the report of Dr. Fumich that you state that you read.

21 - - - - -

22 (Plaintiff's Exhibit 171 was marked for identification.)

23 - - - - -

24 MR. GREER: I'm going to object to the
25 introduction of the report of Dr. Fumich and

- 1 move to strike the report.
- 2 A Okay.
- 3 Q All right. Is that the -- is that the same copy that
- 4 you have?
- 5 A I think this is the original.
- 6 Q And is that what you're claiming there is no
- 7 reference --
- 8 A There is a paragraph on the second page that he does
- 9 casually mention the left wrist fracture.
- 10 Q So your report is mistaken, at least in that aspect,
- 11 isn't it?
- 12 A If I said that, then I am mistaken, absolutely.
- 13 Q Do you agree, Doctor, that Joanne Crow's scar from
- 14 the surgery is a permanent residual?
- 15 A Yes.
- 16 Q You agree that Joanne's scar, which is where the bone
- 17 broke through the skin, is also a permanent residual?
- 18 A Unless she has surgery to revise it, yes, it's
- 19 permanent.
- 20 Q You agree that these two scars have caused a **loss of**
- 21 sensation?
- 22 A She's claiming there has been, yes.
- 23 Q I'm asking you if you agree with that statement.
- 24 A I don't know, because it's a subjective response. I
- 25 can tell you what she said, but I don't know.

1 Q Doctor, I call to your attention your report that you
2 sent to the defendant's lawyer and ask you to turn to the
3 last page, Page 5, and I call your attention to your second
4 last sentence. I quote, "Her complaints of pain are
5 similar to individuals with similar injuries." Isn't that
6 what you stated?

7 A That's exactly what it says.

8 Q So if Joanne Crow based on your, as you've testified
9 your wide spread experience in treating injuries of this
10 type, if her complaints are those that are similar to other
11 people with fractured arms, then you have no reason not to
12 believe Joanne Crow, do you?

13 A Well, the complaints of pain are similar, not the
14 complaints of numbness, and I think that's what your
15 original questions were.

16 Q Have you had other patients in which you've performed
17 surgery and plated a fracture for a distal radius?

18 A Sure, many times.

19 Q Have other patients complained of numbness in the
20 area of the incision?

21 A For short periods of time, yes.

22 Q Have patients complained of numbness in the area
23 where the bone has broken through the skin?

24 A For usually a shorter period of time than from the
25 incision. But they do for weeks or months, yes. Not

1 years.

2 Q If a patient were to continue complaining as Joanne
3 has two years and two to three months following the initial
4 collision, would you agree that this is a permanent
5 residual?

6 A I don't know.

7 Q You do agree that her complaints of pain are
8 consistent with your experience in treating other patients
9 with similar type fractures?

10 A The pain that she claimed to have, yes.

11 Q Those pains I think you also stated that were related
12 to transient tendonitis?

13 A Well, I think that that's what it was felt to be.
14 Now, I didn't see her with this, but based on her history
15 that's what I would have called it, yes.

16 Q And what is tendonitis, Doctor?

17 A If is a temporary inflammation of a tendon.

18 Q You just testified that you thought that Joanne
19 Crow's treatment was a good surgical result, is that
20 correct?

21 A Yes.

22 Q Would you agree that the fact that the plate is in
23 her arm and in light of the fact that you don't think it
24 should be removed, isn't that plate a permanent residual of
25 the accident?

1 A I guess it is. I never considered that. But yes,
2 unless it is removed, it will be there forever.

3 Q It's not normal, is it, as far as a person that --

4 A She wasn't born with it.

5 Q Right. And as a matter of fact, in your report, Dr.
6 Corn, you said that you couldn't even get a normal
7 comparison because she had also had a fractured left arm,
8 is that correct?

9 A Well, she didn't have a normal arm to compare it to,
10 yes.

11 Q So essentially we've got a person in Joanne Crow with
12 two arms that are not normal?

13 A No. That's not true. She had full function of her
14 right arm, but her left arm is more -- is the one that's
15 abnormal. There was not a normal one to compare the right
16 arm to. But her indices, that is her range of motion and
17 her size of the muscles, were normal and consistent.

18 Q So is it your testimony that a person with a
19 fractured right arm as you stated from this accident in the
20 collision where the car rolled and then the subsequent fall
21 at home in which she fractured her left arm, that those two
22 arms are normal?

23 A No. The left arm is not normal. The right arm is
24 normal by all objective criteria; that is range of motion,
25 size and muscle development.

1 Q Doctor, in the video -- I assume you've watched the
2 video?

3 A I have not seen the video.

4 Q You didn't observe it?

5 A I did not.

6 Q By the way, I noticed in your thorough review of the
7 records you didn't make any reference to the x-rays. Do
8 you have the x-rays here?

9 A I do not.

10 Q Did you ever review the x-rays before you testified
11 today?

12 A I did not.

13 Q And as you know, Joanne Crow signed an authorization
14 for the defendant's lawyer so that you could get all the
15 records.

16 A I have no idea.

17 Q You testified that you gave a thorough review of all
18 the records in front of you, is that correct?

19 A Yes.

20 Q But, in fact, you haven't thoroughly reviewed all of
21 the medical documents and films relating to Joanne Crow,
22 have you?

23 A I've reviewed everything that was presented to me.

24 Q My question is, in fact, you have not reviewed **all** of
25 the records and documents including the films related to

1 the fracture of Joanne Crow's right arm?

2 A I'll answer it the same way. Everything that was
3 presented to me I reviewed. If there are any other
4 documents or any other entries, I don't know that they
5 exist, and I have not seen anything else.

6 Q Okay. So you don't know whether or not x-rays exist,
7 is that correct?

8 A I have no idea.

9 Q Doctor, in fact, will you please turn through those
10 records in front of you that you thoroughly reviewed and
11 tell me if there are any x-ray reports?

12 A There are x-ray reports.

13 Q So then would you agree that x-rays were taken?

14 A I agree x-rays were taken, sure.

15 Q You just haven't seen them, have you?

16 A I just don't know if the x-rays films exists and
17 nobody ever presented them to me for review.

18 Q You just said you reviewed the reports, and the
19 reports are based on films, is that correct?

20 A Yes. That would be the normal routine.

21 Q Then would you agree with me that x-ray films exist?

22 A They existed at least at one point in time. I don't
23 know if they currently exist. I've never seen them.

24 Q So you don't know the alignment of the plate, nor the
25 alignment of the fracture of Joanne Crow other than what

1 you read in the printed matter on the x-ray report?

2 A Well, I could tell by the physical examination that
3 if there was any malrotation or any poor positioning, she
4 would not have as free a range of motion that she has.

5 Q That was not my question.

6 MR. COTICCHIA: Objection as not
7 responsive.

8 Q The question is, you don't know in regard to the
9 alignment of the fracture and you don't know in regard to
10 the alignment of the plate whether it's normal or not other
11 than what you read in the printed report?

12 A Correct. And what I found on physical examination.

13 Q Is it your testimony that you can palpate the
14 alignment and union of a fracture?

15 A You can palpate the alignment. You can't tell union
16 without an x-ray.

17 Q Doctor, isn't it true that you did not perform any
18 functional strength tests in regard to Joanne Crow?

19 A I did not do any Jamar dynamometer type testing, no.
20 That's not part of my examination.

21 MR. COTICCHIA: Objection. Not
22 responsive to the question.

23 Q Isn't it true that you did not perform any functional
24 strength tests in regard to Joanne Crow's right arm?

25 A I don't know what you mean by functional strength

1 tests.

2 Q Well, you made a reference in the video, did you not,
3 to a Finkelstein test?

4 A That's not a strength test.

5 Q Let me ask you the question, please.

6 Did you not make a reference to the video -- in the
7 video to a Finkelstein test?

8 A I did not review the video. I don't know.

9 Q You don't remember?

10 A I can't remember what I said a month and a half ago.

11 Q Did the defendant's lawyer give you a copy of Dr.
12 Fumich's deposition?

13 A No.

14 Q Did he give you a summary of Dr. Fumich's deposition?

15 A No, he did not.

16 Q So you don't know and you can't even agree or
17 disagree if I were to tell you that Dr. Fumich testified
18 under oath in his video that you did not perform a
19 Finkelstein test?

20 A I did perform a Finkelstein test. I don't know what
21 Dr. Fumich's opinion of that was,

22 Q Did you perform any type of test to determine grip
23 strength or pinch strength?

24 A No.

25 Q What does the Finkelstein test do?

1 A Finkelstein test is strictly a test in which you
2 position the wrist in order to elicit soreness within the
3 first dorsal compartment of the wrist.

4 Q And will you demonstrate to us on the camera how a
5 Finkelstein test is performed?

6 A Use the flexion and ulnar deviation of the wrist is
7 the Finkelstein test.

8 Q That is your understanding of a Finkelstein test?

9 A That's what I've used as a Finkelstein test for 25
10 years.

11 Q Doctor, do you have Campbell's on Orthopedics here in
12 your library?

13 A I do.

14 Q Can we go off the record for a minute so we can find
15 the Finkelstein test.

16 (Recess was had.)

17 Q Doctor, can we agree that you have been nice enough
18 to allow me to review Campbell's Orthopedic Textbook, 7th
19 edition in regard to --

20 A I don't know how much of it you've read. You've
21 certainly looked at Page 462 and 463.

22 Q Okay. I'm going to quote to you. "Finkelstein test
23 is usually positive on grasping the patient's thumb and
24 quickly abducting the hand ulnarward, the pain over the
25 styloid tip is excruciating."

1 Do you agree with that description of the Finkelstein
2 test?

3 A I do.

4 Q And you did not do that test to Joanne Crow, did you?

5 A No. I was instructed at The Cleveland Clinic never
6 to do that because it tends to make people more
7 uncomfortable than they need to be. But the test that I do
8 actually is the equivalent, but rarely gives the patients
9 severe amount of pain.

10 Q So it's my understanding that you do not agree with
11 the medical textbook that you keep in this office, is that
12 correct?

13 A I do not agree with that approach. It's a **very** old
14 test and there are new, more modern ways of doing it that
15 are equally called the Finkelstein test, although it
16 doesn't involve wrenching the thumb. I think that's
17 barbaric.

18 Q I have one question here. Again for the record this
19 is a drawing by Dr. Netter showing you -- I have not marked
20 this as an exhibit. It's only a diagram. Does that
21 drawing by Dr. Netter show the tissue, muscles and nerves
22 involving those areas that we're talking about whether
23 we're talking about Finkelstein or de Quervain?

24 A Well, not all of them, but it does show some of the
25 areas.

1 Q Is it a reasonable drawing or diagram?

2 A It's a reasonable drawing, but it doesn't show where
3 the pathology would be in de Quervain's disease.

4 Q Where would it be in that drawing?

5 A It's the next layer under this one that's drawn.

6 Q So it's not shown in this picture?

7 A I don't see it in that.

8 Q Okay. Thank you.

9 Doctor, what percentage of your practice is related
10 to what we would call here examinations for non-treatment
11 pertaining to injuries or in this case insurance claims or
12 industrial accidents or Workers' Compensation type claims?

13 MR. GREER: I'm going to object to the
14 form of the question and move to strike any
15 references to insurance.

16 MR. COTICCHIA: Objection is noted.
17 Farmers Insurance is a party to this suit.

18 MR. GREER: Sure. My objection
19 stands.

20 Q All right. What percentage of your practice is
21 related to doing examinations at the request of insurance
22 companies or the request of employers or the request of
23 firms that represent insurance companies or law firms that
24 represent employers?

25 A I would say a small portion.

1 Q Can you give me a number in relation of 0 to 100
2 percent?

3 A I see an average of 2 a week out of 60 to 70. So I
4 don't know what that percentage would be. 1/15, 1/32. I
5 don't know. I'm not that great at math.

6 Q Dr. Corn, would you disagree if I told you that your
7 secretary under oath said that you see on the average of 3
8 to 4 patients per week for these types of examinations?

9 A Well, you said specifically for insurance. She was
10 including the Workman's Comp evaluations as well.

11 Q I also said industrial or for employers who are
12 represented by attorneys.

13 A I think it would vary from week to week, but the
14 average is still 2. I can see 4.

15 Q I'm going to quote you a deposition question and
16 answer of Marie Millen. Is Marie Millen still your
17 secretary?

18 A No. She's my office manager and she basically has
19 nothing to do with the scheduling of individuals, but she
20 certainly has what she considers her knowledge in the area.

21 Q All right. On September 9, 1997, which is about a
22 year ago, in the case of Michael Hegedus versus Michael
23 Johnson, apparently you were asked to do an examination of
24 Mr. Hegedus who was injured and involved in a lawsuit. Do
25 you remember that particular case?

1 A Yes.

2 MR. GREER: I'm just going to enter an
3 objection to the form of the question and
4 also foundation.

5 Q On Page 28 Michael Kube asked the following
6 question. "Okay. Over the last let's just talk -- let's
7 take it 6 months, which is more recent time, is that too
8 big a time for you? No. Well, no. I'm going to say it's
9 still going to be the same number, 3 or 4. Answer, a
10 week."

11 Would you agree or disagree with that?

12 A I would say at one point in time it may have been
13 that. It varies from week to week. The Workman's Comp
14 specialty exams, the C-92 exams we do on a rotational basis
15 with all the other doctors who are licensed and approved in
16 the area. I haven't done one since the middle of July, so
17 I think the numbers have changed, but may have been that at
18 one point in time.

19 Q Dr. Corn, it's my understanding that you charge \$900
20 per hour if I am to take your deposition for discovery
21 purposes, is that correct?

22 A My flat rate is \$900 an hour if anybody takes my
23 deposition. It's not just a favored rate for you.

24 Q Dr. Corn, is it my understanding that your rate of
25 \$900 an hour applies to the time you take when you examine

1 Joanne Crow?

2 A No. It has nothing to do with it.

3 Q Well, how do you explain a different rate for
4 examining somebody versus your time for providing a
5 deposition or your testimony today?

6 A Well, that's a good question. I do not charge just
7 for the evaluation. I charge one fee for the entire
8 examination which involves review of medical records and
9 report. I don't bill as a separate charge for the
10 examination and, therefore, I don't do it on a flat hourly
11 basis.

12 Q Well, you testified when the defendant's lawyer asked
13 you these same questions that you were charging for a block
14 of time, and my question is --

15 A For my deposition. Not for my independent
16 examination.

17 Q All right.

18 A Because the blocks of time vary depending on how long
19 it takes to review the medical records and how long it
20 takes to get the records and how many times I've got to go
21 through them. So there's a lot more variables than a
22 straight hourly time as we are doing today.

23 Q How much time did you take in examining Joanne Crow?

24 A The actual exam I believe was about 23, 25 minutes,
25 something like that.

1 Q How much time did you take to review the medical
2 records in front of you?

3 A I don't know. I don't keep a log of that.

4 Q How much time did it take to prepare your report?

5 A Another fraction. I didn't fractionate it like
6 that. I have no idea,

7 Q What was the total charge that you charged Farmers
8 Insurance for the examination, the review of the records
9 and your report?

10 MR. GREER: I'm going to object and
11 move to strike the question. Dr. Corn was
12 not hired or retained by Farmers Insurance.
13 He was hired by me and he was paid by me.

14 MR. COTICCHIA: Farmers Insurance is a
15 party defendant in this case. You represent
16 Farmers Insurance.

17 MR. GREER: I do not represent Farmers
18 Insurance.

19 MR. COTICCHIA: All right.

20 MR. GREER: Wait. I want to get an
21 objection on the record.

22 I am not counsel for Farmers
23 Insurance. I am counsel for the defendant,
24 the estate of Douglas Dotson. Dr. Corn was
25 not hired by Farmers Insurance and he was

1 not paid by Farmers Insurance. He was hired
2 by me and he was paid by my office. I
3 object to the form of the question and I
4 move to strike the question in its entirety.

5 MR. COTICCHIA: Farmers Insurance is a
6 party to this lawsuit.

7 Let's go on with this. Who are you
8 going to bill for reimbursement of the
9 expenses of Gallagher and Sharp for paying
10 Dr. Corn? Who reimburses your office for
11 that expense?

12 MR. GREER: I'm not being deposed.

13 MR. COTICCHIA: Does the estate of
14 Douglas Dotson reimburse you?

15 MR. GREER: I'm not on deposition
16 here, Mr. Coticchia.

17 Q All right. Well, let me ask you another question,
18 Doctor. Have you ever received a 1099 from Farmers
19 Insurance?

20 A I have no idea.

21 Q Have you ever done any examinations at the request of
22 Nationwide, Allstate, State Farm, Progressive, Motorists
23 Mutual? Any of those sound familiar to you, Dr. Corn?

24 A Most of the time I deal directly with the attorneys
25 and I don't know exactly which companies that they are

1 hired by. I really don't know. I don't keep track of
2 them.

3 Q As we were earlier -- I guess I should say as you
4 were earlier testifying, you were asked by the defendant's
5 lawyer hospitals at which you have privileges to treat, and
6 I want to be a little more specific.

7 Tell me what hospitals where you actually performed
8 surgery let's say in the last 12 months.

9 A I have performed surgery at the Meridia Hillcrest
10 Hospital, at Meridia Euclid Hospital, the Mt. Sinai
11 Hospital. I believe I may have done one at Bedford,
12 although I don't keep track of that. But most of my
13 surgeries are at the Meridia Health Systems.

14 Q So that would be Meridia Hillcrest, Meridia Euclid.
15 Do you do any surgery at Meridia Huron?

16 A Not anymore.

17 Q Do you do surgery at University Hospitals?

18 A At the Bedford Medical Center, yes.

19 Q That's an affiliate of University Hospital. Do you
20 do surgery at University Hospital at the University?

21 A No, I do not.

22 Q And I think you testified you're a medical instructor
23 there, is that correct?

24 A Clinical instructor.

25 Q Clinical. You don't teach at the medical school?

1 A Not anymore.

2 Q Okay. And you don't do surgery at University
3 Hospitals?

4 A I've never had privileges at University Hospitals.

5 Q All right. In the last 12 months approximately how
6 many surgeries have you performed at Meridia Hillcrest?

7 A I don't know the numbers of any of the hospitals. I
8 don't keep those kind of statistics.

9 Q In the last 12 months how many surgeries have you
10 performed at Meridia Euclid?

11 A I don't know. I don't keep those statistics.

12 Q In the last 12 months how many surgeries have you
13 performed at Mt. Sinai?

14 A I don't know. I don't keep those statistics.

15 Q Why don't you keep records of the number of surgeries
16 that you perform at each one of these hospitals?

17 A Because I don't need to. It's not -- I don't need
18 that to run my office and I long since -- after almost 20
19 years in practice long since care how many operations I do
20 per year. That's something that's unnecessary in the
21 course of my practice or the course of my business.

22 Q Doctor, I'm going to show you a -- for the record a
23 number of medical records which have been produced pursuant
24 to the subpoena that I filed on behalf of Joanne Crow, and
25 you're welcome to go off the record if you want to look at

1 these. But I want you to take a look at these and then
2 tell me if, in fact, these are all reports that you have
3 prepared.

4 A If those are the ones that were forwarded to you by
5 my attorney that were from another case, yes, those are all
6 reports that I prepared at one point in time. I have not
7 seen them for many months.

8 Q They were not forwarded to me from another case.
9 They were produced in this case.

10 A They were forwarded to you, and the only reason we
11 had them was because we were specifically ordered to retain
12 those in another case, and that's the only reason that they
13 exist. Normally they would not exist.

14 Q Would you like to stay on the record when you go over
15 these reports?

16 A I'm not going to go over them.

17 Q You are not?

18 A No.

19 Q Will you at least take the time to make sure that
20 they are all the same reports that --

21 A I wouldn't have any record whether they were or they
22 weren't. I'm not even going to look at them. They stand
23 for what they are. They were produced. You know what they
24 are. I've read the communications between my personal
25 attorney and you. You know what they are. I know what

1 they are. You know where they came from. I don't know
2 what you're making a big deal out of. I'm not going to go
3 look at them.

4 Q Will you stipulate that these are your records
5 produced by your attorney?

6 A Yes.

7 Q And isn't it true in virtually every one of these
8 records your conclusion is the same?

9 MR. GREER: Objection.

10 A If my opinion was that there was little or no injury,
11 yes, it would be. That is not my universal goal. It is my
12 -- It may be what these reports may have identified, If
13 there wasn't anything wrong, there is nothing wrong.

14 Q Isn't it true when it comes to -- as you refer to a
15 soft tissue injury you always state, this is a subjective
16 injury, there is no objective evidence of an injury?

17 A Mr. Coticchia, I am a physician. If I state that
18 there is no objective evidence of injury, there is no
19 objective evidence of injury. That is my opinion. If
20 there is, believe me, I would be the first one to say that
21 there was.

22 Q But you always state --

23 A I don't always state anything.

24 Q All right. Now that you said you don't always state
25 that, I'm going to represent to you that's what you say in

1 every soft tissue case in front of me.

2 A Those are the ones that you have.

3 Q And I want you to go over them.

4 A I'm not going to bother to go over them.

5 MR. GREER: I'm going to object to the
6 form of the question.

7 Q Are you refusing to go over these reports, Doctor?

8 A I'm not going to waste my time doing that, no.

9 Q Well, I think I have a right to determine your
10 credibility and your motives and your bias as a doctor who
11 is persistently hired by the same companies and the same
12 law firms.

13 MR. GREER: I'm going to object. Move
14 to strike,

15 Q If you are not going to go over these with me on the
16 record, I'll be happy to leave them here with you and we'll
17 conclude or we'll resume this deposition tomorrow. What is
18 your choice?

19 A I have absolutely no intent to look at those files
20 again, so you can do what you want with them. You can ask
21 me whatever questions you would like. I will give you a
22 honest medical opinion or an honest answer, but I am not
23 going to waste my time.

24 Q Doctor, isn't it true on those occasions where there
25 is an objective condition you always state that that

1 condition was not caused by the physical trauma involved in
2 the accident of the patient you're examining?

3 MR. GREER: Objection to the form of
4 the question and foundation.

5 A If there is an objective problem and I believe it's
6 related to the accident, I will state so. If it is not, I
7 will state that it is not.

8 Q Well, I want you to show me in any one of these 104
9 reports where you state that there is an objective injury
10 and it's directly related to the trauma. Will you do that
11 for me?

12 A There may have been none.

13 Q I see.

14 A If there were none, then there were none at the time
15 of the evaluation. It has nothing to go with anything but
16 the facts and the truth.

17 Q Are there other reports that I don't have that cover
18 the time period of January 2, 1996 to December 26, 1997
19 that you have prepared?

20 A I don't know. I have no idea.

21 Q So you don't know if these are all the records that
22 you've --

23 A Those are all the ones that I have retained because I
24 knew I was going to be requested for them during that time
25 period.

1 Q Did you dispose of any that you prepared?

2 A If a case settled or a case was concluded, such as
3 this one will be some day, I do not typically keep that
4 with that record. We kept these -- Excuse me. Let me
5 finish.

6 MR. COTICCHIA: Objection.

7 Q You're not responding.

8 A I'm answering your question.

9 Q You're not responding to the question. My question
10 was, did you dispose of any records independent that I have
11 in front of me from January 2, 1996 until December 26,
12 1997, yes or no?

13 A I don't know.

14 MR. GREER: Object to the form of the
15 question.

16 Q So then you don't know whether or not there are
17 records that we don't have pursuant to this subpoena?

18 A Again, you have everything that we were able to have
19 in relation to another case. Typically we do not keep any
20 reports at all. So those are the only things that we have
21 -- that we had in the office on a chart to chart review of
22 over 10,000 charts, that's the only records that we were
23 able to find. They were specifically not for you, but they
24 were done for a completely different matter and you were
25 just lucky that my attorney was honest enough to let you

1 know that we had them. And that's basically how you got
2 them. Not because you got them from me, because I don't
3 even have those.

4 Q Well, I'm grateful that I'm so lucky. And I just
5 wonder how lucky the 104 people whose reports you prepared
6 pertaining to their injuries feel when in every case nobody
7 had a permanent injury, if there was an objective injury,
8 it wasn't related to the collision. I just wonder why this
9 happens so consistently and you're telling me you're not
10 going to even sit here and review them.

11 MR. GREER: I'm going to object to the
12 form of the question. I'm also going to
13 object that there is no foundation and move
14 to strike the question in its entirety.

15 MR. COTICCHIA: There is no
16 foundation? Well, then let's start all
17 over.

18 Q Doctor, did you receive a subpoena captioned Joanne
19 Crow versus the estate of Douglas Dotson?

20 A I have received many communications from you.

21 Q No. You received one communication.

22 A I don't remember.

23 Q You don't remember receiving a subpoena?

24 A I send, all my subpoenas that we receive to my
25 attorney and he takes care of them.

1 Q Well, would you agree that must be the way that you
2 and I ended up in front of each other with these records?

3 A Probably.

4 Q And that subpoena asked for all of the records and
5 reports that you prepared for insurance companies or law
6 firms that defend insurance companies from the years 1991
7 to 1997, didn't it?

8 A I don't remember.

9 Q All right. And the only records you were able to
10 find were from January of '96 through December of '97?

11 A Correct.

12 Q And those are the ones you say I'm lucky to have, is
13 that correct?

14 A Absolutely.

15 Q You think the people you examined are lucky to have
16 you as their examiner?

17 A I think they're very lucky to have me because I will
18 give them an honest and truthful response.

19 Q Why do you destroy or discard these records? Why
20 don't you keep them?

21 A Well, they are not involving patients that I treat,
22 so I don't have to keep them. I don't have a lot of
23 storage space, and it's my typical office practice once
24 we're finished with a case or an evaluation, we don't keep
25 any records. Most doctors don't keep records of anybody

1 that they see that are not their long-term patients.

2 Q Isn't it true, Doctor, that the reason you have these
3 records disposed of promptly is because they reflect your
4 inability to be fair and objective?

5 MR. GREER: Objection.

6 A No. I really -- That is probably one of the most
7 insulting things that anybody has ever said to me.

8 Q Well, I submit to you that these 104 reports are an
9 insult to people who are honestly injured.

10 MR. GREER: I'm going to object and
11 move to strike the question.

12 A Well, you know, you don't know who these people are.
13 You have no idea what their motives are. You never saw any
14 of those patients. None of them you're familiar with. And
15 you're just assuming that since you know all this medicine
16 that -- and these reports say they didn't have anything
17 wrong with them, that I'm incorrect and you're correct.
18 That's absurd. You're absurd and your requests have been
19 absurd.

20 Q I would never say that. But I think the doctors --

21 A But that's what you're insinuating.

22 Q The doctors who wrote the reports contrary to what
23 you say I think are insulted. And speaking of motives, let
24 me ask you a question.

25 MR. GREER: I'm going to object and

1 move to strike the question.

2 Q Isn't one of your motives and your primary motive in
3 this situation compensation, money?

4 A No. It is a way of making money, but I feel that I
5 have a duty since I don't know many other doctors that
6 would submit to this kind of bologna that you've given me
7 and these legal hurdles that you're making me jump over and
8 the expense that it costs me to answer all of your
9 questions, both stupid and not stupid, that nobody's
10 willing to do this. No doctors, no reasonably good doctors
11 in this community want to go through this. So I am serving
12 a purpose, what I feel it's almost in this case a moral
13 purpose of sticking to my guns and being able to be
14 available as a witness and as an expert. There are nobody
15 that really wants to do this because nobody really wants to
16 go to the expense that you're putting me through or the
17 hassles that you put me through. Nobody else wants to do
18 this.

19 Q Thank you for your speech and your moral
20 righteousness.

21 I would never begin to say I know as much medicine as
22 you. But I will say this, Doctor. I don't understand how
23 you're saying expense that you're going through when you
24 just testified you charge \$900 an hour to sit in front of
25 this camera and explain why you're so morally good.

1 MR. GREER: Objection.

2 Q How is that an expense?

3 A My legal fees --

4 MR. GREER: Objection. Move to
5 strike.

6 A My legal fees to date double what I have ever made in
7 any IME or deposition. They're over \$3,000 at this point
8 in time answering to your subpoenas and all the bouncing
9 around that's going forth with Judge Russo. I am doing
10 this case for free. As a matter of fact, I'm losing \$1,800
11 being involved in this case.

12 Q How are you losing \$1,800?

13 A Because my expenses are exceeding what I earned.

14 Q Well, Doctor, I would like to know what those
15 expenses are since you've brought them **up** and since you
16 told us the great sacrifices you're making. What expenses
17 are you talking about?

18 A I'm talking about what my running legal expenses are
19 in answering your subpoenas and having my attorney present
20 at all the pretrials, et cetera.

21 Q You mean you have to pay a lawyer, is that what
22 you're complaining about?

23 MR. GREER: Objection.

24 A I am not complaining. I am making a statement that
25 because of what you are asking me to produce I have to have

1 someone to answer for me in the legal forum. I am not
2 capable of doing that because I'm not a lawyer.

3 Q Doctor, isn't it a fact that the reason you
4 consistently write these reports and the reason you
5 consistently appear on video is because you're able to make
6 a substantial income and a substantial part of your
7 practice as a doctor?

8 MR. GREER: Objection.

9 A One of my reasons for doing this is that it helps pay
10 the bills. The major reason I do that is because I enjoy
11 doing it, I enjoy the investigative work, I enjoy being
12 involved in cases, I enjoy reading short stories, and I
13 enjoy making a living from it. I don't enjoy dealing with
14 people like you.

15 Q Well, thank you, Doctor. I enjoy sitting here and
16 asking you these questions because I question your
17 integrity.

18 MR. GREER: I'm going to object and
19 move to strike the question.

20 Q I do want to get it on the record, you don't have to
21 look at every one of these, but I want to get it on the
22 record and I've got marked Plaintiff's Exhibits 68 through
23 Plaintiff's Exhibit 170, and a couple of them were stapled
24 together so it's probably more than 104, but I want to make
25 sure that these are the same records that you're referring

1 to that were produced under subpoena.

2 A I don't know. I'm not going to touch them. I'm not
3 going to look at them. My attorney had them. I haven't
4 even seen them for over a year. I don't really get
5 involved with that.

6 Q And isn't it true the only reason that you have these
7 is because you're under court order in another case?

8 A Yes.

9 Q And it's not the only case in which somebody has
10 questioned your motives for writing these reports, is it?

11 MR. GREER: Objection.

12 A No. Nobody's ever -- Nobody's ever questioned my
13 motives for writing the reports.

14 Q Well, I am, Doctor.

15 A Nobody's ever to my face insulted me in that way.

16 MR. GREER: I'm going to object and
17 move to strike.

18 Q Doctor, I'm looking you in the eye and I'm
19 questioning your honesty and your reason and your moral
20 righteousness for writing 104 reports in which every one of
21 these injured people either don't have an objective injury,
22 if the injury's objective, of course it's not related to
23 the accident. Please show me one report in your history as
24 a renowned orthopedic surgeon and a darling of the defense
25 industry where you wrote somebody was permanently injured

1 as a direct result of the trauma which was the subject of
2 the litigation.

3 MR. GREER: I'm going to object, move
4 to strike and ask the Court to impose
5 sanctions on plaintiff's counsel for
6 unethical questioning which has continued
7 throughout this case.

8 MR. COTICCHIA: Bias, prejudice and
9 motive is never unethical.

10 MR. GREER: Your questioning is
11 unethical.

12 MR. COTICCHIA: Well, I'll be happy to
13 suspend this deposition because I'm going to
14 have the court order Dr. Corn to go through
15 all of these reports.

16 I don't have anymore questions.

17 - - - - -

18 FURTHER EXAMINATION

19 - - - - -

20 BY MR. GREER:

21 Q Doctor, I have a few questions. And I would love to
22 get back to the real issue, which is the plaintiff, Joanne
23 Crow here, okay?

24 A Sure.

25 Q You were asked some questions about her complaints of

1 a loss of sensation around the incision site. To a
2 reasonable degree of medical certainty do you believe that
3 that will improve with time?

4 A I do.

5 Q Doctor, you were asked some questions about the plate
6 which is in the plaintiff's arm, the small plate. Are
7 there any problems with that plate in the plaintiff's arm
8 at present?

9 A No.

10 Q Is there any reason to believe that there ever will
11 be any problems with that plate remaining in her arm?

12 MR. COTICCHIA: Objection.

13 A No.

14 Q Do many people who have had fractures and have plates
15 on various limbs go throughout the remainder of their lives
16 with those plates still in place?

17 A I would say a very large proportion, probably 85 to
18 90 percent of individuals have their plates intact and
19 never have them removed.

20 Q And do those people have any problems with those
21 plates?

22 A No. Other than maybe setting off an airline alarm
23 once in a while, but that's not what I would call a
24 problem.

25 Q Doctor, you were asked some questions pertaining to

1 x-rays. You had all of the radiology reports concerning
2 x-rays pertaining to the plaintiff, correct?

3 A Yes.

4 Q Was there any need for you to see the films?

5 A No.

6 Q From your review of Dr. Fumich's report ~~is~~ there any
7 indication that he reviewed the x-ray films prior to
8 writing his report?

9 A No.

10 Q You were asked some questions about misalignment of
11 the bones in the plaintiff's arm. Is there any record
12 anywhere from any physician which indicates that there ~~is~~
13 misalignment of the fractures?

14 A No.

15 Q Has any doctor mentioned anything or testified as far
16 as you know about any misalignment?

17 A Not that I'm aware of.

18 Q You were next asked some questions about a
19 Finkelstein test. Could you show the jury how you perform
20 a Finkelstein test and why?

21 A Yes. I was instructed early on in my residency that
22 you never grab the patient's thumb because if they have a
23 true de Quervain disease, they will be very painful for
24 weeks if not months afterwards by doing it that way.

25 The whole object in a Finkelstein test is to stretch

1 the first dorsal compartment which contains two tendons,
2 one that moves the second bone in the thumb and one that
3 moves the first bone, the metacarpal and the proximal
4 phalanx, the first digital bone. And what you do is you
5 have the patient -- you can do the exact same thing without
6 wrenching it by having the patient curl their thumb over
7 whereby gently holding their thumb down, flexing the wrist
8 and bringing the wrist in an ulnar direction, instead of
9 doing that which is what the Finkelstein test is. I do it
10 a little bit more passively and a little bit more humanely.

11 Q Would you obtain the same result by performing the
12 test in that manner?

13 A Absolutely.

14 Q Now, Doctor, I want to just clarify a couple things
15 for the jury.

16 You mentioned that -- you used the figure 10,000
17 charts in response to Mr. Coticchia's questioning
18 concerning the 104 reports which he has obtained from your
19 counsel. Is that approximately the number of patient
20 charts and other charts and files which you had or have?

21 A Yes. It's actually more than that. Closer to
22 12,000.

23 Q And as I understand from Mr. Coticchia's questioning,
24 the 104 reports cover a time frame of January 2 of 1996
25 through December 26 of 1997, essentially two years.

1 A I don't know the dates. I'm not sure.

2 Q If we assume Mr. Coticchia's questioning, they cover
3 from January 2 of '96 through December 26 of 1997. That
4 would be almost two years.

5 A Yes.

6 Q A few days short of that.

7 A Correct.

8 Q And if we assume that he is correct that there are
9 104 reports that were produced, would you agree that that
10 essentially means that you prepared one IME report a week?

11 A Certainly that would be the mathematics.

12 MR. GREER: Thank you, Doctor. No
13 other questions.

14 MR. COTICCHIA: I have a couple of
15 questions.

16 - - - - -

17 FURTHER EXAMINATION

18 - - - - -

19 BY MR. COTICCHIA:

20 Q Isn't it true, Doctor, of those 12,000 charts you
21 cannot tell us reasonably what percentage of those charts
22 represent non-treatment parties who are making injury
23 claims?

24 A None of them are, or none that -- we don't typically
25 keep them unless we're waiting for the deposition or we're

1 waiting for the medical records to come about or they have
2 not been settled. Those are the only ones that we would
3 have in our files.

4 Q What records do you keep regarding examinations you
5 do of injured claimants at the request of insurance
6 companies or defense firms?

7 A We basically keep the records through the time of the
8 examination. We typically send the records back to the
9 referring attorney. We typically do not keep the medical
10 report that we forwarded. And if it settles, that's it and
11 then we never have any other contact with it. If it goes
12 to a deposition, then all the material is forwarded back to
13 us for the deposition, So we do not keep anything here in
14 the office.

15 Q Speaking of records, in regard to your examination of
16 Joanne Crow do you have any notes or records independent of
17 the report you made for the defendant's lawyer?

18 A Basically I have some typewritten notes only.

19 Q Can I see those, please?

20 A Sure.

21 MR. COTICCHIA: We can go off the
22 record for a minute.

23 (Recess was had.)

24 MR. COTICCHIA: I would like a copy of
25 Dr. Corn's notes on the examination of

1 Joanne Crow.

2 Q Is that all right with you, Doctor?

3 A I don't care.

4 MR. COTICCHIA: Thank you. I don't
5 have anymore questions.

6 MR. GREER: No questions.

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8 (Deposition concluded.)

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1 The State of Ohio,)
) **SS:** CERTIFICATE
 2 County of Cuyahoga.)

3 I, Aimee N. Szinte, a Notary Public within and for
 4 the State of Ohio, duly ~~commissioned and qualified~~, do hereby
 5 certify that the within-named ROBERT C. CORN, M.D. was by
 6 me first duly sworn to testify the truth, the whole truth,
 7 and nothing but the truth in the cause aforesaid; that the
 8 testimony then given by him/her was by me reduced to
 9 stenotypy in the presence of said witness, afterwards
 10 transcribed upon a computer, and that the foregoing is a
 11 true and correct transcript of the testimony so given by
 12 him/her as aforesaid.

13 I do further certify that this deposition was taken at
 14 the time and place in the foregoing caption specified and
 15 was completed without adjournment.

16 I do further certify that I am not a relative,
 17 counsel or attorney of either party or otherwise interested
 18 in the event of this action.

19 **IN WITNESS WHEREOF**, I have hereunto set my hand and
 20 affixed my seal of office at Cleveland, Ohio on this 25th
 21 day of September, 1998.

22
 23 *Aimee N. Szinte*
 Aimee N. Szinte, Notary Public
 24 Aimee N. Szinte, Notary Public
 in and for the State of Ohio.

25 My Commission expires 10-17-01.

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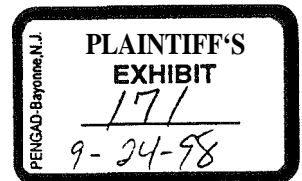
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June 1, 1998

Joseph L. Coticchia Co., L.P.A.
Attorney at Law
Ste. 1640 Standard Bldg
1370 Ontario Street
Cleveland, Ohio 44113



RE: Joanne M. Crow
DOI: 6-19-96

Dear Mr. Coticchia:

This is the **review** of records and **report you requested** on **Joanne M. Crow** in your letter of 5-27-98. Records **reviewed were** basically the Cleveland Police Crash Report and MetroHealth Medical Center Admission Chart.

Ms. Crow **is** a 35 year old female standing 5'10", weighing 150 pounds who **was** involved in a motor vehicle accident on 6-19-96. **She** was the restrained front seat passenger in a Ford Escort going 50 miles an hour. **The** driver **lost** control with the car swerving and hitting the median strip. **The** police report indicates the car may have **flipped** twice. There was heavy **damage to the vehicle** and the driver was killed. Ms. Crow **was** taken to Metropolitan General Hospital by squad for treatment of a right forearm injury. The forearm **was** deformed and one could visually see the bone poking out of the skin. **There** was a 2cm length volar laceration and a volar ulnar laceration. She was taken to surgery by Dr. Petersilge and underwent irrigation and debridement of the wounds followed by open reduction and internal fixation of the **distal radius** fracture with a seven hole 3-1/2, 3.5 limited contact dynamic compression plate. **She was** casted for approximately six weeks

Prior to **going to the** Operating Room, a strength and neurosensory examination **was** completed which **was** normal. **She was** admitted for **treatment** with IV antibiotics and **discharged** from the hospital on 6-22-96.

After the accident, cervical spine films were taken which were negative. On 10-1-96, she was evaluated by Dr. Wilbur with the complaints of numbness. He felt she had a de Quervain's disease and sensory deficit to the cutaneous nerves at the level of injury and was referred to a hand clinic. He noted that she did have full supination and pronation on the 10-1-96 visit. Records indicate Ms. Crow having gone to therapy but the frequency and length of time in duration of therapy postoperatively could not be determined from the records provided,

Page 2

Records likewise did not include notes from the suggested hand clinic visit nor did they include actual X-rays. It could not be determined from the records whether the patient was right or left hand dominant.

The rest of the Metropolitan General Hospital records are referable to an unrelated left wrist fracture as a result of falling down the stairs on 5-31-97. Apparently she suffered a comminuted left distal radius fracture and underwent a closed reduction which lost position and subsequently required open reduction and fixation with an Ilizarov fixator. She developed a pin track infection after this.

No other records were available for review.

Having reviewed the material, it is my opinion that Ms. Crow suffered a compound fracture at the junction of the distal and middle third of the right radius and ulnar styloid fracture as a direct result of the 6-19-96 motor vehicle accident. As a result of the accident and subsequent fracture, she required surgical intervention and hospitalization with IV antibiotic treatment. Records reflect continued residual of numbness and tendinitis in the wrist area.

Records reflect that she did respond to surgical treatment with the fracture having healed but that there was residual. As a result of this residual, I must consider the prognosis guarded. She will require future treatment with removal of the plate and screws. In addition, she may require tenovagotomy of the wrist for the de Quervain's disease and possible surgical intervention for the residual numbness. In addition, there is a high correlation of the development of carpal tunnel syndrome after such injury and subsequent surgery.


Further, residual of stiffness and pain with changes in barometric pressure will be permanent residual as they are with most fractures.

It is my opinion that the above described injury was caused by the 6-19-96 motor vehicle accident.

There were no billing statements for the services rendered in the records reviewed.

I hold the above opinions within a reasonable degree of medical certainty and reserve the right to change these opinions pending the review of whatever records may become available for review in the future.

Most respectfully,



Robert Mark Fumich, M.D.
RMF:NM